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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 267

WILLIAM FARRELL,

Petitioner,

v.

UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION, LUCKENBACH STEAMSHIP COMPANY, INC.,

Respondents.

PETITIONER'S BRIEF IN SUPPORT OF WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner William Farrell urges a review by this Court of the law governing his cause for maintenance and cure and for wages. Petitioner does not urge review of the law or facts relating to his cause for negligence. The facts of the case on the issues of maintenance and cure and wages are not in dispute (R. 11, 21). We therefore summarize only those facts relating to the issues of maintenance and cure and wages.

Summary Statement of Matter Involved

Maintenance and cure. Farrell on October 15, 1942, enlisted in the United States Navy, and also and on the same day joined the American Merchant Marine. He received training at the United States Merchant Seaman's Training School at Hoffman Island, New York. (R. 26).

During the course of his wartime service in the Merchant Marine, and while temporarily in a replacement pool for seamen at Naples, Italy, and on December 16, 1943, Farrell signed on the "S. S. James E. Haviland" as a seaman with the grade of oiler. The "Haviland" was owned and operated by the United States with the Luckenbach Steamship Company as general managers. Farrell was then about twenty-two years old (R. 36, 26, 27).

On February 5, 1944, while the "Haviland" was docked at Palermo, Italy, Farrell received shore leave late in the afternoon and left the ship with three companions. Palermo was then in a damaged condition following its capture from the enemy. The invasion of Italy was then in progress, and dimout or blackout regulations were required (R. 37, 13, 14).

Farrell started to return to the "Haviland" with another seaman about eight o'clock that evening. It was dark and raining and they became lost in the city but were directed to the port area by a local policeman. They arrived at Gate 1 of the area which was about a mile distant from Gate 5, the gate by which they had left and which they were trying to find. They were admitted to the port area through Gate 1 upon presentation of their passes to the sentry on duty and endeavored to make their way to the ship (R. 37, 14).

While Farrell and his companion were walking along a muddy road in the semi-darkness on opposite sides of the road in order to be safe from approaching vehicles running

with dimmed or no lights, Farrell fell into a graving dock (R. 37, 14).

From the time of the accident until June 30, 1944, Farrell was in several government hospitals, and on that date he was discharged at Norfolk, Virginia, as "completely disabled" (R. 42, 21).

At the time of the trial, June 10-12, 1947 (R. 34), it was shown that as a result of the fall, Farrell sustained multiple and compound fractures of the skull and became permanently blind and subject to recurring pain, especially in his head. It was also found that he suffered from convulsive attacks coming from traumatic epilepsy, the result of the skull fracture, which may well become worse as he grows older (R. 21, 15, 38). He was always a healthy individual before this accident (R. 21).

Both of the lower courts held that Farrell would continue to need treatment and medical care from time to time to alleviate his attacks of headaches and epileptic convulsions, and that these may grow worse (R. 43, 21).

Farrell was awarded what he had spent for medical treatment and medicines up to the date of trial and in addition was allowed maintenance to December 30, 1944, equivalent to six months after his discharge from the Norfolk hospital, as the full measure of the responsibility of the respondents for Farrell's maintenance and cure (R. 42, 25).

The District Court's conclusion of law which the decision of the Circuit Court in effect affirms, states "The maximum cure possible for libellant's condition having been effected, libellant is not entitled to any further allowances for maintenance and cure" (R. 34).

It is believed that Farrell is entitled to "a more liberal application of the rule" of maintenance and cure as stated in the *Calmar* case, 303 U. S. at page 530.

Wages. After his period of training Farrell shipped on the "S. S. Johns Hopkins", owned and operated by the United States, as an oiler on September 15, 1943. He left the "Hopkins" at Naples, Italy, to enter a hospital for ten days and was then assigned to the replacement pool in Naples (R. 36, 26).

The rate of pay received by Farrell on the "Hopkins" was $110 per month and when he later signed on the "Haviland" at Naples on December 16, 1943, he signed on in the same grade of oiler and with the same rate of pay. He was so engaged at the time of his accident on February 5, 1944, which completely disabled him (R. 36, 26). The controversy in this case arises with respect to his wages due from the "Haviland" only.

The shipping articles on the "Haviland", the Circuit Court stated,[*1] provided (R. 40):

> "It is agreed between the master and seamen * * * of the S.S. James E. Haviland * * * now bound from the Port of Philadelphia, to a point in the Atlantic Ocean to the eastward of Phila. and thence to such ports and places in any part of the world as the master may di-

---

[*1] Exhibit 3, the copy of Farrell's shipping articles on the SS. James E. Haviland, introduced at page 48 of the typewritten Record (see stipulation, R. 44), states:

> "* * * now bound from the Port of Philadelphia, to a point in the Atlantic Ocean to the eastward of Phila. and thence to such ports and places in any part of the world as the Master may direct or as may be ordered or directed by the United States Government or any department, commission or agency thereof and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding 12 (twelve) calendar months.[2]

---

[2] If these words are not necessary they must be stricken out. * * *"

rect * * * and back to a final port of discharge in the United States, for a term of time not exceeding 12 (twelve) calendar months."

The shipping articles it will be noted did not use the word "voyage" but both courts below concluded that the "voyage" of the "Haviland" ended May 28, 1944, and that Farrell was entitled to wages only until that time (R. 40, 25). Farrell claims to be entitled to his wages for the full twelve months of his contract or until December 16, 1944.

The Basis of the Court's Jurisdiction

The jurisdiction of this Court is based upon Title 28, U. S. C. A. Section 1254.

The date of the judgment sought to be reviewed is May 10, 1948 (R. 290). A petition for a rehearing was entertained by the Circuit Court and denied on June 11, 1948 (R. 296).

Petition for writ of certiorari was granted by this Court on November 22, 1948.

Questions Presented

(1) Was there a correct interpretation by the Circuit Court of Appeals in this case of the rule of maintenance and cure as applied to a seaman injured in the wartime service of his ship and resulting in permanent and total disability?

(2) Is the petitioner, a seaman injured in the wartime service of his ship resulting in permanent and total disability and admittedly in need of medical care from time to time, entitled to "a more liberal application of the rule" of maintenance and cure than he received in this case?

(3) Did the Circuit Court properly construe the petitioner's term of service as stated in his shipping articles?

(4) Was the seaman Farrell deprived of the benefit of the provisions contained in 46 U. S. C. A. Sections 572, 570?

Opinions of the Courts Below

The opinion of the Circuit Court of Appeals for the Second Circuit in this case is reported at 167 F. 2d 781. The opinion of the District Court for the Southern District of New York appears in the record at pages 10-25.

Specification of Errors

(1) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "Generally speaking, however, the duty of the ship owner to provide maintenance and cure for the seaman 'does not extend beyond the time when he is as completely cured as he ever can be'" (R. 41).

(2) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "It is sufficient to say here that, even if the appellant's injuries were 'caused' by his 'employment', we think the general rule applicable" (R. 41).

(3) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

> "Were it not for the above quoted language in the *Calmar* case we would have no hesitancy in affirming the decree below. That language, however—in conjunction with the fact that the reversal of the decree was 'without prejudice to any later suit by respondent

to recover maintenance and cure to which he may then be entitled'—is conceivably susceptible to the interpretation that, though the seaman is as cured as he ever can be, he may still recover such amounts as are needed in a definitely ascertainable period in the immediate future to provide care of a clearly determinable kind. But if this interpretation were the correct one, the language would seem to be inconsistent with that on page 530 of the opinion stating in effect that the duty to provide maintenance and cure ends when the seaman is as completely cured as he ever can be. We take it, therefore, that, though Taylor, the seaman in the *Calmar* case, was affected with an 'incurable malady', he was not at the time of the trial as cured as he could ever possibly be. Indeed, the Court said, 'Care and treatment at frequent intervals, with periodic medical observation of the patient, are of aid in *arresting its (the disease's) progress.*' *Page 526.* Moreover, as the Circuit Court of Appeals stated, 92 F. 2d 84, 87, the incurable disease from which Taylor suffered was 'of a progressive nature' so that it could not be said that 'the ordinary means which medical science affords for the treatment and care of this disease will be exhausted prior to his death.' Here that is not the case" (R. 42).

(4) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

"To allow the appellant his wages in full to the end of the voyage only instead of for a full year was also correct" (R. 40).

(5) The Circuit Court of Appeals for the Second Circuit erred in making the following ruling:

"The voyage was to end in the United States and did end there at the Port of New York on March 28, 1944.

It seems clear that the agreement was for employment for the duration of the voyage only and not for twelve months, the cause, 'for a term of time not exceeding 12 (twelve) calendar months', serving to limit the period for which the appellant was employed, not to extend it beyond the end of the voyage" (R. 40).

THE ARGUMENT

POINT I

Farrell's case being that of injuries received in the wartime service of the ship, the Court should apply a more liberal rule of maintenance and cure than merely that to such time as he is as completely cured as he ever can be.

The difficulty here is in the application of the law laid down in the *Calmar* case, 303 U. S. 525 (1938).

In the *Calmar* case, Mr. Justice Stone writing for the Court considered the point left open in the case of *The Osceola*, 189 U. S. 158 (1903), as expressed in the rule, stated on page 175:

> "1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, *at least* so long as the voyage is continued." (Emphasis supplied.)

and was applying this law to the case of an incurable disease manifesting itself during the employment, but not caused by it. The seaman had stubbed his toe in the engine room and had alleged that that accident was the cause of his disease known as Buergers Disease, and the Trial Court had held and the Supreme Court had agreed, page 529, that the disease was not caused by the injury to his foot.

Two classes of chronic cases were discussed in the *Calmar* case and were described at page 529 as:

(1) where "the efficient cause of the injury or illness was some proven act of the seaman in the service of the ship";

(2) where "it was deemed enough that he was incapacitated when subject to the call of duty as a seaman, and that his incapacity continued after the voyage had ended."

The Court then states the question involved as follows, page 530 (clearly referring to the second class):

> "There remain the questions whether in the case of a chronic illness the duty continues so long as medical attendance and care are beneficial, until death if the need lasts so long, and whether a lump sum may be awarded to defray the cost of meeting the anticipated need."

The Court then refers to both classes of cases and states the rule applicable to each class. In stating the rule applicable to class (1), the Court stated at page 530:

> "In answering the first we lay to one side those cases where the incapacity is caused by the employment. As to them considerations not present here may apply, which might be thought to require a more liberal application of the rule than we think is called for in this case."

In stating the rule applicable to class (2), the Court states at page 530:

> "We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be

> expected to result from nursing, care, and medical treatment. This would satisfy such demands of policy as underlie the imposition of the obligation. Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service."

But the Court modifies this stand as to the rule applicable to class (2) in a concluding paragraph, page 531, where it is stated:

> "The seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind and for a period which can be definitely ascertained."

If this is so, i.e., if the classes of maintenance and cure cases referred to in the *Calmar* case and the rules applicable thereto are as we have stated them, then it can not be true as the Circuit Court has stated in its opinion of May 10, 1948 (R. 41), that "It is sufficient to say here that, even if the appellant's injuries were 'caused' by his 'employment,' we think the general rule applicable."

It can not be true, because the Supreme Court took the pains to state the two classes and the different rules applicable to each.

The words on page 531 of the *Calmar* case, reading "The seaman's recovery must therefore be measured in each case * * *" are doubtless the words that lead the Circuit Court to adopt the interpretation that the Supreme Court was announcing one rule for both classes of cases. It is submitted, however, that the Supreme Court was merely referring to each case of the latter class of cases mentioned, to wit, "incapacitated when subject to the call of duty as a seaman * * * incapacity continued after the voyage * * *"

or as later and more specifically defined "the incurable disease which manifests itself during his employment but is not caused by it."

The Supreme Court had "laid aside" the first class of cases of "proven acts of the seaman in the service of the ship," or as later referred to "where the incapacity is caused by the employment" as to which "a more liberal application of the rule" might be called for.

We submit that the Supreme Court was referring to just such an injury as Farrell sustained in this case and was distinguishing it from the disease, bodily infirmity and sickness cases, and other cases not "incurred" in the service of the ship,—cases which manifest themselves during the employment but are not caused by it, such as the Court had before it in the *Calmar* case.

This is clearly shown by the three cases the Supreme Court referred to, middle of page 530. In the first of these cases, *Reed* v. *Canfield*, Fed. Cases, No. 11641 (Circuit Court Mass., 1832), the injuries consisted of frozen feet causing amputation of the toes, and were due to the seaman being blown out to sea in a small boat while returning from shore to the ship, a whaler. Judge Story decided in this case that the injuries were received in the service of the ship and affirmed an award of maintenance and cure incurred during the year between the time of the injury and the trial.

In the case of *The J. F. Card*, 43 F. 92 (D. C. E. D. Mich., 1890), referred to by the Supreme Court, the case was that of injuries apparently not chronic, consisting of a capsular fracture or bruise sustained by the libellant being hit by a boom and falling to the deck, while reefing a mainsail on the ship on Lake Erie. There was no question raised as to whether the injury was caused by the employment. The only question was as to the duration of the maintenance and cure. The Court reduced an award of seven weeks'

maintenance and cure and allowed only physicians' fees and return fare, pointing out that the seaman could have been treated, free of expense to himself and the owners of the ship, at a marine hospital and stating that the rule adopted in *Reed* v. *Canfield* was for the protection of seamen on long ocean voyages and not to the short trips customary in Great Lakes shipping.

The third and last case referred to by the Supreme Court was a case from the Second Circuit, *The Bouker No. 2*, 241 F. 831 (1917), and was a case of pneumonia, the seaman having felt unwell a few days before he had declared himself too sick to work and had left his ship and gone home. The seaman was an engineer on a steam tug hauling garbage scows, and making two trips per day in good weather, at a stipend per week amounting to about $100.00 per month, plus food and quarters while on the tug. The Court allowed maintenance and cure for as long as "he would have remained in the marine hospital had he gone there." Judge Hough stated in this case that the limits of cure or care must always depend upon the facts of each particular case. The seaman had sued in *forma pauperis* and had alleged negligence because of the dampness and unwholesome condition of the sleeping quarters. The libel was not sustained on the negligence, but the owners of the steam tug appealed the award of maintenance and cure. The seaman had apparently recovered at the time of trial.

All three of these cases relied upon by the Supreme Court in the *Calmar* case seem to us, therefore, to be cases where the incapacity was caused by the employment and, therefore, the meaning of the Supreme Court's opinion must have been that the different and more liberal rule referred to applied to that class of cases.

The citation by the Second Circuit of the case of *Luksich* v. *Misetich*, 140 F. 2d 812 (C. C. A. 9, 1944), with denial of certiorari, 322 U. S. 761, as the sole authority of the Court's ruling allowing maintenance and cure only to such

time as the seaman is as cured as he ever can be, would seem to indicate that the Second Circuit considered the denial of the certiorari as indicating a retraction or change of opinion by the Supreme Court as to the view stated in the *Calmar* case.

The *Luksich* case, however, would seem to be insufficient authority for this proposition, because the seaman there was a fisherman who had signed an agreement to fish on shares for the tuna season only,—a short season. This would, therefore, be a special case, as pointed out in *The J. F. Card* and *The Bouker No. 2, supra*. See also the statutory provision in *U. S. C. A., Title 46*, Sect. 566, making the share fisherman a special case.

It also seems that the Ninth Circuit did not consider the *Luksich* case authority for situations like that of the case at bar, because in the later case of *Seville* v. *United States*, 163 F. 2d 296, 299 (1947), a case of fractures of bones in the hand and wrist sustained while unloading ship, in which negligence was not established, the statement in the *Luksich* case is referred to as dictum.

Furthermore, the only other citation of the *Luksich* case, other than the one just cited and in the case at bar, is by the Supreme Court of Texas in the case of *Premeaux* v. *Socony-Vacuum Oil Co.*, 192 S. W. 2d 138 (1946), in a death action, and by way of dictum.

Even if the case at bar were a case of the second class, to wit, an incapacity manifesting itself during the employment but not caused by it, it is submitted that too harsh a rule has been applied by applying the criteria of *improvement* rather than of *benefit*, or at least, of *need*. All three of these criteria are found in the quotations from the *Calmar* case, *supra*.

Circuit Judge Clark, by way of a strong dissenting opinion in the case of *Loverich* v. *Warner*, 118 F. 2d 690, 697, (C. C. A. 3, 1941), took issue as to whether the criteria

should be improvement, as he concluded, or benefit, as the majority of the Court had held. With this strong dissent in its favor, a petition for certiorari was presented to the U. S. Supreme Court and certiorari was denied, 313 U. S. 577.

The *Loverich* case was that of a throat-cancer manifesting itself during employment, but not claimed to be caused by it and, although as the Court pointed out, there was some question about it, this case therefore may be taken as a case of the second class. If this liberal rule of benefit applies to the second class of cases, then *a fortiori*, it would apply to the first class, as to which a more liberal rule is required.

The Circuit Court stated as a fact, in its opinion (R. 43), that "the appellant will from time to time require some medical care to alleviate his attacks." Certainly by alleviating his attacks, he would benefit, and who is to say that such alleviation is not "needful", particularly as to a seaman, a ward of the Court?

We do not argue at length the question as to whether the injuries to Farrell were caused by the employment as we consider from the Circuit Court's opinion that the Circuit Court was fairly well persuaded that they were.

We regard the underlying facts as settled by the holding of the Circuit Court (R. 41), that Farrell was "on shore leave in the process of returning to his ship" and that he was not injured "as a result of intoxication or other wilful misbehaviour."

The facts being as found, the case appears to us to be on all fours with *Reed* v. *Canfield, supra*, and amply supported by *Aguilar* v. *Standard Oil Co.* (Case No. 454), 318 U. S. 724, 726, 736 (1943). See also *Smith* v. *U. S.*, 167 F. 2d 550 (C. C. A. 4, 1948).

As to the amount of the recovery to which we believe Farrell entitled, the District Court awarded maintenance

for only six months after leaving the hospital at Norfolk, Virginia on June 30, 1944 (R. 42), at the rate of $3.50 per day (R. 13, 25).** Trial of the action having been on the 10th, 11th and 12th days of June, 1947 (R. 34), it is submitted that at the least and under the rulings of the *Calmar* case and *Reed* v. *Canfield, supra*, cases, less meritorious than Farrell's, Farrell should have had maintenance for the remaining 17 months and 10 days before the trial. In addition we believe Farrell should have maintenance paid to him at regular intervals in the future as long as his need continues.

"For as long as such disability * * * exists," was the standard adopted by 50 U. S. C. § 1292(e); 58 Stat. 758, Ch. 451, Sept. 30, 1944; House Rep. #1232, 78th Cong., 2d Sess.; Senate Rep. #1140, 78th Cong., 2d Sess.

As to the question of maintenance and cure for life as claimed in the libel, this question was also raised in *Reed* v. *Canfield, supra,* as Judge Story noted, page 429. In answering this question the learned Justice refers to Cleirac, Judgmens d'Oleron, arts. 6 and 7 and notes by Cleirac; Consolato del Mare, c. 182, c. 137; 2 Pard. Coll. Mar. 152, with apparent approval and states that such case may well be left for decision when it shall arise directly in judgment.

A translation of Cleirac's notes referred to by Judge Story is found in the work of Judge Peters, "*Peters Admiralty Decisions*, 1792-1806" a two volume work. Judge Story cites it with approval in his earlier opinion in *Harden* v. *Gordon*, 11 Fed. Cases 480, 483, 485 (Case No. 6047, Cir. Ct., D. Maine, 1823), as well as in *Reed* v. *Canfield*, p. 428. The translation (appearing in Vol. 1, Appendix,

** War Shipping Administration Reg. 108 dated July 18, 1945 allowed that sum even in cases of injuries occurring before the date of the Regulation.

A veteran who has suffered blindness in both eyes rendering him so helpless as to be in need of regular aid and attendance, at the time of this award, was entitled to a monthly pension of $235.00 [35 CFR, 1945 Supp., 35.011 (13)].

p. xv, and identified as Cleirac's in Vol. 1, Appendix, pp. iii, iv) states:

> "If in defending himself or fighting against an enemy or corsairs, a mariner is maimed, or disabled to serve on board a ship for the rest of his life, besides the charge of his cure, he shall be maintained as long as he lives at the cost of the ship and cargo. Vide the Hanseatic Law, Art. 35."

Art. 35 of the Laws of the Hanse Towns referred to in the commentary also appears in Judge Peters' work, Vol. 1, Appendix, p. civ:

> "Art. xxxv. The seamen are obliged to defend their ship against rovers, on pain of losing their wages; and if they are wounded, they shall be healed and cured at the general charge of the concerned in a common average. If anyone of them is maimed and disabled he shall be maintained as long as he lives by a like average."

Concerning the source of the commentaries on the sea laws appearing in his work, Judge Peters states, Vol. 1, Appendix, p. iv:

> "The 'notes and illustrations' which are highly valuable, will be found by a reference to Cleirac, to have been principally abridged from his work, and indeed, in some instances they are extracted verbatim. * * * their real author (Cleirac) * * * is justly estimated among the most distinguished jurists of France."

Judge Richard Peters who published "*Peters' Admiralty Decisions*" was a Register of Admiralty from 1771 to the beginning of the Revolutionary War. After the War, he refused a proffered appointment by Washington as Comptroller of the Treasury to accept the position of Judge of the District Court of Pennsylvania from 1792 until his death in 1828 (Nat. Cyc. of Am. Biog., Vol. 12, p. 235).

In *Jennings* v. *Carson*, 8 U. S. 2, 7 (1807), Judge Peters declined to follow the law of England in a prize case and pointed out that admiralty proceeds by a law which considers all nations as one community. The decision of Judge Peters was affirmed and his opinion was reprinted in full in the opinion as "too important to be omitted."

There is, we recognize, a question of the interpretation of this application of Art. VI of the laws of Oleron, by Cleirac, as approved by Judges Story and Peters. Was Farrell injured fighting the enemy? The record shows that Farrell enlisted in the United States Navy on October 15, 1942, and at the same time, *i. e.*, same day and same office, that he enlisted in the Merchant Marine (R. 26, Typewritten, R. 43). That Farrell did so out of the highest patriotic motives can not be doubted, especially in view of the fact that previously thereto he was working on the B. & O. Railroad (Typewritten, R. 43), a job in which his chance of remaining on a deferred status was excellent. His wages there, furthermore were higher, *i. e.*, at least $200 per month (Typewritten R. 44).

"From causes relating to the war effort," was all that was required by 50 U. S. C. § 1292(c), *supra*.

POINT II

The petitioner should have been allowed wages for the full twelve months stipulated in his shipping articles.

The pertinent portions of Farrell's shipping articles are quoted in the opinion of the Circuit Court (R. 40), and *supra*, page 4.

It will be noted that the Circuit Court in its opinion erroneously used the word "voyage" as though the word "voyage" were contained in that agreement, whereas the fact is that it is not; but also and more important apparently refers to that word as having some well defined and

understood meaning, not explained by the Circuit Court. It is submitted that the term "voyage" is used in various senses and properly refers to the whole term of the mariner's employment, *Enochasson* v. *Freeport Sulphur Co., et al.*, 7 F. 2d 674, 675 (D. C. S. D., Texas, 1925), and that if this is so, there was manifest error in the decision.

A much more serious error, however, appears in the Circuit Court's decision on the subject of wages. The only words in the shipping articles covering the term, as distinguished from the place of the employment, are those reading "for a term of time not exceeding 12 (twelve) calendar months".

U. S. Code, Title 46, Section 572, states:

> "A master of a vessel in the foreign trade may engage a seaman at any port in the United States, in the manner provided by law, to serve on a voyage to any port, or for the round trip from and to the port of departure, or for a definite time, whatever the destination. The master of a vessel making regular and stated trips between the United States and a foreign country may engage a seaman for one or more round trips, or for a definite time, or on the return of said vessel to the United States may reship such seaman for another voyage in the same vessel, in the manner provided by law."

U. S. Code, Title 46, Section 570, states:

> "Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping commissioner in the United States, shall apply to such engagements made before a consular officer; and upon

> every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise duly made."

It is only as an agreement for employment for 12 (twelve) calendar months, therefore, that this agreement meets the statutory requirements, *i. e.*, "for a definite time."

The Clarification Act, U. S. Code, Title 50, Appx. Section 1291, gives to seamen employed through the War Shipping Administration the rights of seamen on privately owned and operated vessels.

The Circuit Court of Appeals, Second Circuit, refused to recognize as authority the previous decision of the Third Circuit in *Jones* v. *Waterman S. S. Corp.,* 155 F. 2d 992 (1946, affirmed 318 U. S. 724), upon the ground that the agreement there involved covered one or more voyages as the master might direct within a limited term. The authority upon which the Third Circuit relied in the *Jones* case, however, that of *Enochasson* v. *Freeport Sulphur Co., et al.,* 7 F. 2d 674 (D. C. S. D. Texas, 1925), contains a long and learned discussion of the subject.

The shipping articles in the *Enochasson* case provided for:

> "Trading to or between the United States and the Republic of Mexico or the West Indies as the master may direct and such other ports or places in any part of the world as the master may direct and back to a final port of discharge in the United States for a term of time not to exceed six calendar months."

These articles, therefore, were very similar to those at bar in providing for going to "such other ports or places in any part of the world as the master may direct."

The libellant in the *Enochasson* case had served on the vessel for three months and ten days and had made several

voyages between Mexico and Texas and Cuba and Texas. He was awarded wages for the full six months. The *Enochasson* case was also cited and followed by the Ninth Circuit in the later case of *Mason* v. *Evanisevich*, 131 F. 2d 858 (1942).

The articles as they are written by the respondents relating to the description of the voyage (U. S. C. A. Title 46, Sect. 713, Table A), and using the construction put upon them by the Circuit Court of Appeals for the Second Circuit, would permit the employer to terminate the employment when the seaman falls ill or is injured, in the next port of discharge in the United States, or to continue on if the seaman were then able to serve,—certainly a one-sided contract.

The construction adopted by the Circuit Court of Appeals also requires a reading into the articles, after the words "thence to such ports and places in any part of the world as the master may direct", the additional words "other than the United States."

The seaman having a legal obligation to serve for twelve months, if required by the respondents, there should be, we submit, the correlative obligation that the respondents under the rules should pay his wages during that time. Otherwise the seaman is placed in a position of unfair advantage.

The construction of the articles adopted by the Second Circuit would as the Court pointed out in *Shields* v. *U. S.*, 73 F. Supp. 862, 867 (D. C. E. D. Pa., 1947), permit the seamen to leave the ship at the first port in the United States after leaving Philadelphia,—obviously not the intention.

In *The Thomas Tracy*, 24 F. 2d 372 (C. C. A. 2, 1928), the Court stated, page 374: "The articles when in doubt are most strictly construed against the ship." There the period of employment was construed as one voyage, but this was to protect the seaman against a charge of deser-

tion and was based on the seaman's own testimony that he believed the employment to be merely for one round trip.

The normal and usual course, however, is for the employment to continue after the round trip, *Labor Board* v. *Waterman S. S. Corp.*, 309 U. S. 206 (1939).

Even aside from the duties of the Admiralty Court as guardian of the rights of seamen, the Court will not, in the exercise of the equity powers which it has in admiralty, enforce a one-sided agreement. In *Moran* v. *Standard Oil Co.*, 211 N. Y. 187 (1914), Justice Cardozo stated, page 195:

> "The trial judge held that the contract imposed no obligation on the defendant to employ the plaintiff for five years, and that at the defendant's option it was terminable at will. We cannot accept that construction of its meaning. An intention to make so one-sided an agreement is not to be readily inferred. (Sanford v. Brown Brothers Co., 208 N. Y. 90.) The contract was drawn by the defendant's lawyers and was tendered to the plaintiff with the assurance, as he says, that his future for the next five years would be secure. Since the language is the defendant's we must construe it, if its meaning is doubtful, most favorably to the plaintiff."

The *Moran* case was followed with approval by the Second Circuit in the case of *Thomas A. Edison, Inc.* v. *Blackman Distributing Co.*, 66 F. 2d 722, 728 (1933); by the Third Circuit in the case of *A. M. Webb & Co., Inc.* v. *Robert P. Miller Co.*, 157 F. 2d 865, 868 (1946); by the Sixth Circuit in *Bach et al.* v. *Friden Calculating Machine Co., Inc.*, 155 F. 2d 361, 365 (1946); by the Eighth Circuit in *Marriman Medical Supply, Inc.* v. *Ft. Dodge Serum Co.*, 47 F. 2d 458, 463 (1931).

The case of *O'Brien* v. *Miller*, 168 U. S. 287, 297-299 (1897), construing a bottomry bond is to the same effect.

In the single authority which the Second Circuit relied upon, *The Ipswich*, 46 F. 2d 136 (D. C. Md., 1930), the articles read, page 138:

> "* * * now bound from the Port of * * * Baltimore, Md., to Pacific Coast port via Atlanta Coastwise, and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge and/or loading port in the United States on Atlantic or Gulf Coast for a term of time not exceeding 12 calendar months."

The District Judge stated as to these articles, page 138:

> "Here the articles clearly call for a voyage from Baltimore to the Pacific Coast and back to a final port of discharge on the Atlantic Coast."

To us, *The Ipswich* articles are clearly different and inapplicable to our case. The Second Circuit's opinion neglects to give any effect whatever to the words "* * * and such *other* ports and places in any part of the world * * *." (Emphasis added.)

In any event, it is clear to us that the Circuit Court has resolved an ambiguity in petitioner Farrell's articles in favor of the ship owners, whereas the decision should be directly to the contrary, the inferences arising from the ambiguity being construed as a matter of right against the author of the articles and in favor of the seaman.

Conclusion

We respectfully submit that Farrell has been clearly wronged by the misapprehension and misapplication of the applicable decisions of this Court; that his cause is just and that the principles of law involved are of considerable importance in the law of seamen generally; and that in view of the conflict of the decisions of the Circuit Courts on the

subject, there is an apparent lack of harmony and uniformity in the law which only this Court can correct by a clarifying decision; that Farrell should have maintenance for life for as long as his need continues, and wages for the full twelve months of the obligation stated in the articles.

Respectfully submitted,

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APPENDIX

ASSOCIATION OF THE BAR
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LES USAGES ET COUTUMES DE LA MER.

DIVISE'ES EN TROIS PARTIES.

I. De la Navigation.
II. Du Commerce Naval, & Contrats Maritimes.
III. De la Jurisdiction de la Marine.

Avec un Traitté des Termes de Marine, Reglemens de la Navigation des Fleuves & Rivieres ; Et les nouveaux Edits, Reglemens, Arrests & Jugemens rendus sur le fait du Commerce de la Mer.

A ROUEN,
Chez EUSTACHE VIRET, dans la Cour du Palais.

M. DC. LXXI.
Avec Privilege du Roy.

bleſſoient, où l'on leur fit choſe grevante, ils doivent eſtre gueris & penſez ſur le couſt de ladite Nef.

1. *Le Maître peut chaſſer, & mettre hors les Matelots quereleux, notamment l'agreſſeur & ſes complices.*
2. *Matelot bleſſé en faiſant ſervice au Navire, ou au Maître, doit eſtre bien traité, penſé & medicamenté aux dépens du Navire.*
3. *Si le Matelot eſt bleſſé, combatant pour la conſervation du Navire & marchandiſe, le traitement d'iceluy ſera Avarie groſſe.*
4. *Arreſt de la Cour de Parlement de Bourdeaux, en la cauſe de Fiton, pris & mené captif par les Turcs, en faiſant ſervice à ſon Maître.*

1. SI les Matelots s'enyvrent, font des querelles, ſe battent & ſe bleſſent, le Maître peut chaſſer & mettre hors les riotus, notamment l'agreſſeur, & ſes adherans ou complices, que ce jugement nomme *Son ſecours*. L'Agreſſeur eſt *princeps delicti, & ei omnia imputantur, l. quoniam multa facinora. C. ad legem Iuliam, De vi publica.* Et en ſortant leur doit faire rendre tout ce qu'ils ont receu : en outre, il leur fera rembourſer ce qu'il luy faudra bailler de plus que leurs gages, aux autres qu'il prendra en leur place. *VVubuy Art. 18. Charles Quint Article 23. & ſuivans*, leſquels ſtatuënt & ordonnent certaines peines proportionnées à la gravité des peccadiles, & fautes commiſes par les Matelots.

2. Que ſi le Matelot faiſant ſon devoir, & rendant ſes ſervices au Maître & au Navire, eſt bleſſé & reçoit dommage, il doit eſtre penſé, medicamenté, bien traité, & du tout indemnisé aux dépens du Navire. *VVubuy Article 18. Hanze. Theuton. Art 39. Charles Quint. Art. 27. & 28. Philippe II. Roy des Eſpagnes Art. 16.* Et ſi le Matelot faiſant ſervice eſt pris par les Fourbans, le Maître eſt tenu de le redimer, & en outre luy payer ſon loyer, tout ainſi que s'il avoit continué de ſervir pendant ſa captivité. *Conſulat chap. 182.*

3. Et ſi en ſe défendant, ou combatant contre l'ennemy ou les Fourbans, il eſt mutilé ou rendu perclus & inhabile à travailler le reſte de ſa vie ; outre les penſemens, il aura du pain tant qu'il vivra aux

dépens du Navire & de la cargaiſon, & c'eſt *Avarie groſſe. Mynsing. Theut. Art. 35. Charles Quint Art. 27. & 28. Arg. legis ſecundum Iulianum, & ibi Barth. & l. cum duobus. §. quidam, D. Pro ſocio. Solent enim æſtimati naves & quæ in naui ſunt, atque ex his ſummæ conflari ad damna quæ eveniunt, in quibus ſunt & vectorum impendia, ferantur à Dominis navium & mercium pro parte quam habent in ea ſumma; & hæc ipſi Iuri naturæ ſunt conſentanea Hugo Grotius. De Iure Pacis & Belli lib. 2. cap. 12. num. 21.* Iugement d'Oleron quatriéme.

4. En l'an 1621. Gilles Eſteben, Bourgeois & Marchand de Bourdeaux, chargea vne barque de trente-ſix Tonneaux de Vin pour Calais, & prépoſa à la conduite ſon ſeruiteur nommé Piton: la Barque étant ſortie hors la riviere de Bourdeaux, en pleine mer fut rencontrée d'un Navire fourban Turc, qui leur court ſus, les contraint d'amener; & enfin les ayant pris, les Pirates laiſſent la Barque & le Vin, dautant que, par Religion, les Turcs ne boivent pas de Vin, quoy que ce ſoit, n'en font pas marchandiſe, l'Alcoran leur défend: ou à l'aventure que les Fourbans étoient d'intelligence avec le Maître de la Barque, lequel étoit Ecoſſois, car les Turcs ne luy firent point d'autre outrage, ny à ſon équipage, mais ils ſe ſaiſirent du ſeul Piton, & l'emmenerent captif en Barbaie, où il fut vendu, & demeura quatre ans & demy en eſclavage, en grand miſere & pauvreté: enfin Piton eſt racheté d'aumônes en l'an 1625. & fut payé pour ſon rachapt ou rançon la ſomme de ſept cens quatre-vingt livres.

Piton revenu à Bourdeaux, trouve que ſon Maître Gilles Eſteben eſtoit decedé, il fait action à ſa vefve devant les Iuges & Conſuls de la Bourſe, & demande ſes ſalaires, tant pour le temps precedent à ſa captivité, que pour le temps qui a couru pendant ſa detention & ſon eſclavage: en outre le rembourſement de ſa rançon, & ſes dommages & intereſts: la vefve d'Eſteben decline, & demande ſon renvoy devant les Iuges Preſidiaux de Guyenne, les Iuges Conſuls l'en deboutent, appel en la Cour, & Requeſte en évocation du principal.

La Cour oüy Corbies pour l'Appellante; Du Mantet pour Piton intimé, a mis l'appel, & dont a eſté appellé au neant: évoquant & retenant le principal de la Cauſe, & faiſant Droit aux Parties, a condamné & condamne la Partie de Corbies, payer à la Partie de Mantet pour tous ſalaires, rachapt & rançon, dépens, dommages & intereſts, la ſomme de mil livres, ſans autres dépens, le dernier Aouſt 1630. Monſieur Dalis Preſident.

Ce qui eſt conforme aux Arreſts du Parlement de Paris cités par Mornac. *ad legem. inter cauſas. §. non omnia. D. mandati*, & contre

Appendix

USES AND CUSTOMS OF THE SEA.

DIVIDED INTO THREE PARTS.

I—Navigation.

II—Naval Commerce and Maritime Contracts.

III—Marine Jurisdiction.

With a treatise on marine terms; regulations governing the navigation of rivers and streams, and the new edicts, regulations, decrees and decisions rendered in connection with sea trade.

Translator's Note: Written by hand: By Etienne Cleirac Chaingy.

ROUEN

at EUSTACHE VIRET, In the Court of the Palace.

1671

With privilege of the King.

OF OLERON.

* * * wounded or if harm is done to them they must be cured and treated at the expense of the said vessel.

1. The Master may discharge and put off the quarrelling seamen in particular the aggressor and his accomplices.

2. A Seaman who has been wounded while doing his duty to the vessel or to the Master must be well treated, attended to and given medicines at the cost of the vessel.

3. If the seaman is wounded while fighting for the conservation of the vessel and of the merchandise, his treatment shall be considered as general average.

4. Decree of the Court of the Parliament of Bordeaux in the matter of Fiton, who was captured and taken into captivity by the Turks while serving his Master.

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1. If the seamen get drunk, quarrel, fight or wound one another, the Master may chase and put off those rioting seamen in particular the aggressor and his assistants or accomplices whom this Decision calls "his assistants". The aggressor is "princeps delicti and ei omnia imputantur", l' "quoniam multa facinora, C. ad legem Iuliani, De vi publica".

And when they leave they must render an account of everything they received. Furthermore, they must be made to refund what it is necessary to pay over and above their wages to the others who must be taken in their place. See "Vubuy Art. 18. Charles V. Article 23 and following", which stipulate and order certain penalties in proportion to the gravity of the offenses and faults committed by the seamen.

2. If the seaman while doing his duty and serving his Master and the vessel, is wounded and injured, he must be treated, given medicine and attended, and be indemnified for everything at the cost of the vessel—See Vubuy Article 18. Hanze-Theuton, Art. 39, Charles V, Art. 27 and 28, Philippe II. King of Spain Art. 16, and if the seaman while serving, is taken by pirates, the Master is under the obligation to ransom him and furthermore to pay his wages just as if he had continued serving during his captivity.—Consulat Chapter 182.

3. And if while defending himself or while fighting against the enemy or against pirates he is multillated or

crippled and unable to work for the rest of his life, in addition to the treatment he shall be given bread* as long as he lives at the expense of the vessel and of the cargo

DECISIONS.

(Page 26.

and this is considered as general average. Hanze-Theut. Art. 35, Charles V Art. 27 and 28. Arg. legis secundum Julianum and ibi Barth and 1. cum duobus Par. quidam, D. Pro socio. Solent enim aestimari naves and quae in navi sunt, atque ex his summa confici ut damna quae eveniunt, in quibus sunt and vulneratorum impendia, ferantur a Dominis navium and mercium pro parte quam habent in ea summa; and haec ipsi juri naturae sunt consentanea Hugo Grotius. De Iure Pacis et Belli lib 2. cap 12, num. 21. Jugement d'Oleron quatrieme. (Fourth Decision of Oleron).

4. In the year 1621, Gilles Esteben, a "Burgher" and Merchant of Bordeaux loaded a vessel of 36 tons with wine for Calais and appointed for the carrying of same his servant by the name of Fiton. The vessel having left the Bordeaux River at high tide, was met by a Pirate Turkish Vessel which ran her down, compelling her to come alongside and finally, having taken them (the crew) prisoner, the pirates left the boat and the wine because, according

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* We quote from page 207 of the Twentieth Century Dictionary:

Bread—1. An article of food made by moistening, kneading, and raising or fermenting the flour or meal of some species of grain, and baking it in an oven, usually in the form of loaves, or as biscuits, rolls, etc.

2. Food in general; as give us this day our daily bread.

3. Support of life in general; maintenance.

to their religion, the Turks do not drink any wine at all and do not deal in same as this is prohibited to them by the Koran. The pirates were possibly in agreement with the Master of the Vessel, who was a Scotchman, because the Turks did not offend him nor his crew but they only took hold of Fiton and took him as a captive in Barbary where he was sold and remained a slave for 4½ years, in great misery and poverty. Finally Fiton was ransomed with arms in the year 1625 and his ransom or redemption was paid in the sum of 780 Livres (French Pounds).

When he returned to Bordeaux, Fiton found that his Master, Gilles Esteben, had died. He started an action against his Widow before the Judges and Consuls of the Exchange and sued for his wages both for the time previous to his captivity and for the time of his detention and slavery and in addition for the reimbursement of his ransom and for damages and interest.

The Widow Esteben refused to pay and requested that the matter be sent back to the Presiding Justice of the Province of Guyenne. The Judges and Consuls rejected her appeal. She appealed to the Superior Court in connection with the main action.

The Court, after having heard Corbies for the Appellant and Du Mantet for Fiton, the Appellee, set aside the appeal, and invoking and upholding the main action and meting justice to the parties condemned, and condemns the party represented by Corbies to pay to the party represented by Du Mantet, all his wages, ransom, expenses, damages and interest in the sum of 1000.—French Pounds without any other expenses, on the last day of April 1630. Mr. Daffis acted as President Justice.

This is in accordance with the Decrees of the Parliament of Paris cited by Mornac. ad legem. inter causas Paragraph. non omnia. D. mandati and against * * *

Certificate of Accuracy

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK }

TRANSLATION
FROM
French

On this day personally appeared before me A. J. Miroy who, after being duly sworn, deposes and states:

That he is a translator of the French and English languages by profession and as such connected with the LAWYERS' & MERCHANTS' TRANSLATION BUREAU;

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document written in the French language, (on the official paper of the LAWYERS' & MERCHANTS' TRANSLATION BUREAU); and

That the attached translation is a true and correct English version of such original, to the best of his knowledge and belief.

A. J. MIROY.

Subscribed and sworn to before me this
7th day of January, 1949.

CARL V. BERTSCHE,
(Notarial Stamp).